

REMARKS

The non-final Office Action dated March 25, 2005 has been reviewed and carefully considered. Claims 1-30 are pending in the application. Claims 1-30 are rejected.

Applicants appreciate the interview held with Examiner on April 7, 2005. Applicants understand the issues related to the below discussed 35 U.S.C. § 101 rejection of the claims. Applicants are aware that Examiner is attempting to gain examining authority over concurrently filed patent application 10/628,646. Applicants also understand that simultaneous issue of the present application and the concurrently filed 10/628,646 application may be possible. Applicants submit that no agreement was made on the merits of the case.

In paragraph 1 on page 2 of the Office Action, claims 1-30 were provisionally rejected under 35 U.S.C. § 101 over U.S. Patent Application No. 10/628,646 filed on July 27, 2003.

Applicant respectfully traverses the § 101 rejection. Applicant respectfully submits that the claims are patentably distinct and thus a double patenting rejection is improper. For example, a reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). If there is an embodiment of the invention that falls within the scope of one claim, but not the other, then identical subject matter is not defined by both claims and statutory double patenting would not exist.

Claim 1 of Application No. 10/628,646 requires at least disposing a magnetic bias field source proximate to the pole tip and causing current to flow through the magnetic bias field source for providing a magnetic bias-field at a pole tip to facilitate pole-tip magnetization switching. However, an embodiment of the present application does not require causing current to flow through the magnetic bias field source for providing a magnetic bias-field at a pole tip.

Rather, the present invention, as recited in the claims, merely requires a magnetic bias field source being disposed proximate to the pole tip. Clearly, there are many ways to provide a magnetic bias field source proximate to the pole tip without "causing current to flow through the magnetic bias field source for providing a magnetic bias-field at a pole tip", e.g., moving a magnet close to the pole tip.

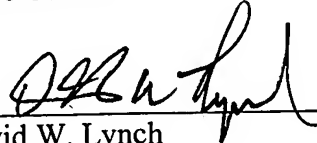
Thus, the claims are patentably distinct. Moreover, the statutory categories are different. Accordingly, Applicant respectfully requests withdraw of the double patenting rejection.

On the basis of the above remarks, it is respectfully submitted that the claims are in immediate condition for allowance. Accordingly, reconsideration of this application and its allowance are requested. Please charge/credit Deposit Account No. 50-0996 (HITG.052PA) for any deficiencies/overpayments.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Attorney for Applicant, David W. Lynch, at 651-686-6633 Ext.

116.

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